IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6420 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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CHANDRAKANTBHAI D ACHARYA - Petitioner
Versus
DY GENERAL MANAGER & 2 - Respondents

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Appearance :
MR YOGESH S LAKHANI for Petitioner
MR AS VAKIL for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/03/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, the petitioner – Ex Clerk-cum-Cashier, serving in State Bank of

Saurashtra has prayed for appropriate Writ, direction or order quashing and setting aside the order of dismissal dated 26.12.1995, which is confirmed by the appellant authority by order dated. 11.09.1996.

2. The petitioner was at the relevant time, when departmental inquiry was initiated, was serving as Clerk-cum-Cashier and charges levelled against the petitioner are as under :

(a) That the petitioner had misbehaved with one of the employee of the Bank – Smt Kataben Nagji Kava who vide her letter dated 22.09.1986 has complained of such misbehavior of the petitioner;

(b) That the petitioner on 23.09.1986 in the Bank premises misbehaved with staff of the Bank, leaving Bank premises and went to the Police Station by misrepresentation tried to lodge false complainant against one of the employee Shri J.K.Rana;

(C) That the petitioner had remained unauthorized absent on duty on 23.09.1986 from 12.15 p.m. to 2.15 p.m;

(d) That the petitioner during his service tenure at Una was selling “smuggled goods” in the office during business hours;

(e) That the petitioner often came in the Bank in drunken condition, misbehaved with the staff members and also threatened them with physical assault;

(f) That the petitioner had obtained Bank's letter head from one Shri K.B. Naiya for his personal use without permission from competent authority; and

(g) that the petitioner on 27.07.1986 at about 8.30 p.m. went to the residence of Branch Manager, Shri A.S. Fichadia, with an illicit motive of getting signed by him a certificate to the effect that he bears good character and when Shri Fichadia, refused to sing the certificate, he got annoyed and threatened him and his family members and also tried to assault him with a knife which he had taken with him.

3. The petitioner was served with the charge-sheet and departmental inquiry was initiated. Before that, memo was issued to the petitioner for remaining unauthorized absent on 24.09.1986. Thereafter, the petitioner was suspended by order dated 01.10.1986 pending further investigation and inquiry. A criminal case No. 213 of 1987 was filed against the petitioner in the year 1987 for the offence punishable under Section 353,504, 506(2) of the

Indian Penal Code. By communication dated 11.02.1992, the petitioner was informed various acts of misconduct committed by him for the period between 20.08.1985 to 01.10.1986. That the learned Magistrate delivered final judgment dated 04.02.1993 in the aforesaid criminal case and acquitted the petitioner and, that; the petitioner was served with charge-sheet dated 30.07.1993 with the departmental proceedings. That the Inquiry Officer was appointed on 05.01.1994 and thereafter, departmental inquiry was concluded on 02.12.1994. The Inquiry Officer intimated to the petitioner enclosing copies of the inquiry proceedings upto 24.11.1994 including exhibits Nos. 1 to 39 presented by the Presenting Officer and other concluding proceedings and calling upon the petitioner to give his written arguments / statement of defence. By communication dated 24.12.1994, the petitioner responded to the charge-sheet. Inquiry Officer submitted his report on 12.07.1995. By communication dated 16.08.1995, the inquiry report was communicated to the petitioner; that, by order / communication dated 26.12.1995, the respondents tentatively proposed punishment of dismissal of the petitioner from service and the petitioner was directed to show-cause why punishment of dismissal should not be imposed. The petitioner replied to the said communication dated 26.12.1995 by reply dated 11.01.1996. The petitioner was given personal hearing on 25.03.1996 and the petitioner gave his reply. Thereafter, having held all the charges proved against the petitioner, impugned order

of dismissal came to be passed by the disciplinary authority on 17.04.1996. Being aggrieved and dissatisfied with the same, the petitioner preferred an appeal before the Appellate Authority and the Appellate Authority by order dated 11.07.1996 dismissed the said appeal and confirmed the order dated 17.04.1996. Therefore, the petitioner has filed the present petition under Article 226 of the Constitution of India.

4. Learned Advocate appearing for the petitioner has assailed the impugned order of dismissal by making following submissions :

(a) As the petitioner was acquitted by the learned J.M.F.C., Una, by judgment and order dated 04.12.1993, departmental inquiry on the same ground, ought not have been initiated by the disciplinary authority;

(b) The impugned order passed by the disciplinary authority is against the principles of natural justice; and

(C) In the facts and circumstances of the case, the order of dismissal was not warranted and the impugned order of dismissal is too harsh and / or disproportionate to the charges levelled and proved against the petitioner.

5. Shri A.S.Vakil, learned Advocate appearing

on behalf of the respondent – Bank while opposing the present Special Civil Application submitted that as held by the Hon'ble Supreme Court in the case of ***Ajit Kumar Nag v/s. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Others reported in (2005) 7 SCC 764*** inspite of acquittal in criminal proceedings, departmental proceedings can go on. It is also submitted by him that even otherwise, there were five charges levelled against the petitioner, out of which with regard to only one charge there was a criminal complaint and so far as inquiry is concerned, on conclusion of the departmental inquiry all the other charges are proved against the petitioner and the petitioner is held guilty and therefore, also order of dismissal was justified. He has submitted fullest opportunity was given to the petitioner which can be seen from the report of the Inquiry Officer. It is submitted that inspite of various intimations and communications, the petitioner did not participate in the departmental inquiry and only after conclusion of the inquiry, the petitioner responded to the charge-sheet and even belated reply by the petitioner was considered by the Inquiry Officer and, thereafter, the Inquiry Officer has held the petitioner guilty of the charges levelled against him. It is submitted by him that considering the seriousness of the charges proved against the petitioner and the misconduct committed by the petitioner, order of dismissal cannot be said to be in any way disproportionate and/or not commensurate with the charges and / or misconduct.

Shri Vakil, learned Advocate has relied upon following decisions in support of his submission and with regard to the scope of judicial review, domestic inquiry and in the matter of punishment:

(1) Devendra Swamy v/s. Karnataka State Road Transport Corporation reported in (2002) 9 SCC 644.

(2) Indian Oil Corporation Ltd. And Another v/s. Ashok Kumar Arora reported in AIR (1997) SC 1030.

(3) Divisional Controller, KSRTC (NWKRTC) v/s. A.T.Mane reported in (2005) 3 SCC 254.

Therefore, it is requested to dismiss the present Special Civil Application.

6. Heard the learned Advocates of the respective parties.

7. The petitioner was serving as Clerk-cum-Cashier in the Bank. He was charge-sheeted for the charges referred hereinabove. On considering the same, it appears that they are serious in nature and if proved, the order of dismissal was warranted. Out of five charges levelled against the petitioner with regard to only one charge – criminal proceedings was initiated, in which the petitioner was acquitted. However, with regard to other four charges, the same

were not subjected to criminal proceedings. On conclusion of departmental inquiry, all the charges are proved against the petitioner and the petitioner is held guilty. Under the circumstances, even if the submission on behalf of the petitioner is accepted that when he is acquitted by the competent Criminal Court, for the same charge, departmental inquiry should not have been initiated, in that case also, with regard to other charges, the petitioner is held to be guilty and, therefore, the order is not vitiated.

8. So far as the contention on behalf of the petitioner with regard to violation of principles of natural justice is concerned, considering various communications produced by the respondent along with affidavit-in-reply, right from initiation of departmental inquiry and issuance of charge-sheet up to conclusion of departmental inquiry, it cannot be said that adequate opportunity had not been given to the petitioner. It appears that the petitioner did not participate in the departmental inquiry and after the departmental proceedings were concluded on 02.12.1994, the petitioner for the first time responded to the charge-sheet on dated 29.12.1994 and still the inquiry Officer has considered the said defence while submitting the report.

9. Considering various communications and even findings of the Inquiry Officer, it cannot be said that the impugned order is in breach of principles of

natural justice. In fact, more than sufficient opportunity have been given to the petitioner. On conclusion of the departmental inquiry, the Inquiry Officer has found the petitioner guilty of all the charges, considering the same and after giving opportunity to the petitioner to the proposed punishment of dismissal and after considering the reply submitted by the petitioner, impugned order of dismissal has been passed.

10. As held by the Hon'ble Supreme Court in the case of ***Indian Oil Corporation Ltd. V/s. Ashok Kumar Arora*** *(supra)*, jurisdiction of High Court in the case of departmental inquiry and the findings recorded therein are very limited and the High Court does not exercise all the powers of appellate Court / authority. It is also further observed by the Hon'ble Supreme Court that the jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and / or the punishment is totally disproportionate to the proved misconduct of an employee.

11. While dealing with the scope of judicial review of penalty or punishment imposed by the disciplinary authority, the Hon'ble Supreme Court in the case of ***Devendra Swamy v/s. Karnataka State Road Transport Corporation*** *(supra)* has held that

punishment awarded by disciplinary authority, unless shockingly disproportionate to the charge, held, should not be interfered with, in exercise of power of judicial review.

12. Considering the aforesaid decisions of the Hon'ble Supreme Court and findings recorded by the Inquiry Officer and that all the charges are proved against the petitioner, it cannot be said that the respondents have committed any error in dismissing the petitioner from service. Looking to the allegations and the charges proved against the petitioner and misconduct committed by the petitioner, it cannot be said that the order of dismissal is disproportionate.

13. For the reasons stated hereinabove, the petition fails. Rule discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

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